

USCIS Late-Breaking Announcement re FY2020 H-1B Cap Season

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As baseball season begins, U.S. Citizenship and Immigration Services (USCIS) throws more curveballs while employers get ready for H-1B cap season. The purpose of the changes in the announcement, as indicated by USCIS, is to support the Buy American and Hire American executive order designed to protect U.S. workers. USCIS states that the Buy American and Hire American executive order seeks to create higher wages and employment rates for U.S. workers and to protect their economic interests by rigorously enforcing and administering U.S. immigration laws. This has included a directive to "advance policies to help ensure H-1B visas are awarded to the most-skilled or highest-paid beneficiaries." An H-1B allows an employer to hire a foreign national for occupations that require a bachelor's degree or higher in an area of specialized knowledge, or the equivalent.

USCIS has made the following announcement:

- Petitions for H-1B cap-subject petitions will be accepted no earlier than April 1, 2019
- Phased approach for Premium Processing. An H-1B requesting premium processing service should be adjudicated in 15 calendar days, unless a Request for Evidence is issued, and has an additional $1,410 filing fee.
    - **Phase 1:** H-1B with request to change status. (This means the beneficiary is present in the U.S. and in a different immigration status, such as F-1 student.)
        - File concurrently with H-1B petition. Premium processing will not begin until **May 20, 2019.**
        - If not filed concurrently, must wait until May 20, 2019 to file request for premium processing.
    - **Phase 2:** All other FY2020 H-1B cap cases. (This means the beneficiary is outside the U.S. or will travel outside the U.S. to obtain an H-1B visa.)

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- May not file concurrently, but must wait for USCIS announcement to file to upgrade the H-1B petition to premium processing.
- Premium processing will not begin until at least June 2019.

USCIS has indicated that premium processing for H-1B petitions that are exempt from the cap (e.g., extension of status) remains available.

- H-1B Data Hub available on April 1 will allow the public to search H-1B petitioners. While USCIS already makes reports available to the public regarding approval and denial rates, the Data Hub will allow the public to search by fiscal year (back to FY 2009), company name, NAICS industry code, city, state, or zip code. Additional information can be found at Understanding Our H-1B Employer Data Hub page.
- H-1B Cap Selection Process: As previously reported, USCIS is flipping the order of the cap selection process. USCIS will first run the 65,000-slot lottery using all applicants, including advanced-degree applicants. Any advanced-degree applicants not selected in the main lottery will then run through the 20,000-slot advanced degree lottery. The rationale for the change is that adjusting the lottery process will prioritize advanced-degree applicants.

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